

**ADMINISTRATIVE AUTHORITY IN MONITORING PUBLIC WORKS
CONTRACT IMPLEMENTATION: A COMPARATIVE STUDY
BETWEEN SYRIAN LAW AND THE FIDIC SYSTEM**

**Közigazgatási hatóság a közcélú beruházások szerződési végrehajtásának
nyomon követésében: összehasonlító tanulmány a szíriai jog és
a FIDIC-rendszer között**

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This study explores the administrative authority in monitoring the implementation of public works contracts, focusing on a comparative analysis between Syrian law and the FIDIC (International Federation of Consulting Engineers) system, with reference to Hungarian law. Public works contracts are crucial for infrastructure development and sustainable growth, necessitating stringent oversight to ensure compliance with contractual terms and specifications. The research highlights administrative authorities' dual role in supervising and directing contract execution. It underscores the importance of legal and technical mechanisms in achieving quality, efficiency, and effectiveness in public works projects.

Keywords: *Public Contracts, Monitoring, Supervision, FIDIC*

Ez a tanulmány feltárja a közigazgatási hatóság szerepét az építési beruházási szerződések végrehajtásának nyomon követésében, a szíriai jog és a FIDIC (Tanácsadó Mérnökök Nemzetközi Szövetsége) rendszerének összehasonlító elemzésére összpontosítva. Az építési beruházásra irányuló közbeszerzési szerződések kulcsszerepet játszanak az infrastruktúra fejlesztésében és a fenntartható növekedés előmozdításában, ezért szigorú közigazgatási felügyeletre van szükség a szerződéses feltételeknek és a jogszabályoknak való megfelelés biztosítása érdekében. A kutatás rávilágít a közigazgatási hatóságok kettős szerepére a szerződések végrehajtásának ellenőrzésében és irányításában, valamint hangsúlyozza a jogi és műszaki mechanizmusok fontosságát az állami beruházási projektek minőségének, hatékonyságának és eredményességének biztosításában.

Kulcsszavak: *közcélú beruházások szerződési, monitoring, felügyelet, FIDIC*

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Introduction

Public works contracts¹ are among the vital contracts that are linked to the implementation of infrastructure projects and sustainable development in countries. The success of these projects depends on the accuracy of their implementation by the terms and specifications specified in the contract. Therefore, the authority to monitor and supervise the implementation of these contracts is one of the fundamental pillars to ensure the achievement of quality, effectiveness, and efficiency in the implementation of the works.

The management's monitoring authority aims to ensure the proper implementation of the contract, by its terms. If this control is exercised properly, this leads to achieving the best results and proper completion, per the specifications and conditions stipulated in the contract. This is not achieved by exercising the authority to amend or impose the penalty, but also by exercising the power of control.

It is recognized that the administration has the authority to control and supervise the contract, and this is an established right for all types of administrative contracts as it is a party to the contract. However, the management authority does not stop there, as it also has the right to direct, as it issues binding orders and instructions to the contractor to ensure to be carried out their obligations. The administration enjoys this right as a public authority responsible for managing public facilities. It is an established right for it, even if it is not stipulated in the contract, and it authorizes it to issue binding instructions and orders to its contracting party.

Ensuring the regular functioning of the public facility justifies the exceptional powers that the administration enjoys in the field of implementing the administrative contract, including the authority of oversight, in the event that the contract does not stipulate these powers.

The importance of studying the oversight authority over the implementation of public works contracts is evident in understanding the legal and technical mechanisms and means adopted by the responsible authorities to ensure the implementation of projects by the contractual terms and agreed-upon technical specifications. Hence, there is a need to study the international FIDIC system and the Syrian Book of General Conditions, as each of them provides a legal and regulatory framework for monitoring and implementing public works contracts.

This research aims to review and analyze the authority to monitor the implementation of public works contracts by comparing the means and tools stipulated in the FIDIC system and the Syrian Book of General Conditions. We will highlight the legal and technical importance of these means and how they can be applied in both systems.

¹ In this paper, the term "public works contract" refers to contracts for the design and/or execution of construction works related to public infrastructure, as defined in EU Directive 2014/24/EU and in international standard forms such as FIDIC. In Hungarian law, the equivalent term is typically "construction investment contract", governed by Act CXLI of 2015 on Public Procurement.

1. The Public works contract

Several jurisprudential and judicial definitions have been given to the public works contract, including that it is: “An agreement between the administration and an individual or company, to construct, renovate, or maintain real estate for the account of a public legal entity and to achieve a public benefit in exchange for the consideration agreed upon, and by the conditions stipulated in the contract”.²

It has also been defined as: “A contracting contract between a public law person and another person, such as an individual or a company, under which the contractor undertakes to carry out a work of construction, demolition, restoration, repair, or maintenance in a property, for the public person’s account. To achieve a public benefit for a price specified in the contract.”³

Under Directive 2014/24/EU, public works contracts’ means public contracts having as their object one of the following: (a) the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex II; (b) the execution, or both the design and execution, of a work; (c) the realization, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work.⁴

From the above, a public works contract can be defined as: An agreement between two parties, one of which is a public legal entity, under which the other party undertakes to carry out works erected on a property, for the account of the public legal entity, and to achieve the public interest, in exchange for a price agreed upon in the contract.

By analyzing the previous definitions, we conclude that the definition of the public works contract was based on specifying the elements upon which the works are based, as the subject of the works must be real estate, for the account of a public legal person, to achieve a public benefit, and in exchange for a price agreed upon in the contract. Below is an explanation of these elements:

1. The subject of the works must be real estate:

Jurisprudence and judiciary agree that public works must be carried out or carried out on real estate. It is not required to be real estate by nature, but rather, it can include real estate by specification, such as laying telephone lines or underwater wires. On that basis, public works are not considered those that are carried out. On movable property, regardless of its importance and magnitude, such as agreements whose purpose is to build a ship or restore it.⁵

² Suleiman AL-TAMAWI: *General Foundations of Administrative Contracts*. 5. ed. Cairo: Egypt, Dar Al-Fikr Al-Arabi, 125.

³ Muhammad AL-HUSSEIN – Muhannad NOUH: *Administrative Contracts*. Damascus University Publications, Damascus Syria, 2005, 56.

⁴ Art 2(1)(6) of Directive 2014/24/EU.

⁵ Suleiman AL-TAMAWI: *General Foundations of Administrative Contracts*. 5. ed. Cairo: Egypt, Dar Al-Fikr Al-Arabi, 127.

2. The works must be carried out on behalf of a public legal entity:
There is no doubt that the presence of the administration as a party to the contract is necessary to give the contract an administrative character if the other conditions are met, which is necessitated by the fact that the administrative rules were created to govern the activity of administrative authorities, not the activity of individuals.⁶
For this reason, works carried out by private persons, for their account, are not considered public works, even if they are under the supervision and control of the administration. Administrative control over individual activities is justified by the public interest, and this does not mean subjecting those works to the legal system of public works.
3. Public works should aim to achieve public benefit:
The fact that public works are aimed at achieving the public interest justified their subjection to a legal system different from the rules known in civil law, and therefore, the contract cannot be considered administrative unless it aims to achieve the public interest, regardless of ownership of the property. A contract may be concluded whose place is a property owned by a private person to provide a service. In general, what achieves the public benefit, and therefore the public interest, such as if the state rents a property from a person to establish a school, and this property needs restoration, so the restoration work here is considered public works because it aims to achieve public interest.⁷
4. The works must be in exchange for a consideration agreed upon in the contract:
The financial consideration is an essential element in the public works contract because it represents the reason for the other party's commitment to implement it. It is also the most important thing that distinguishes this contract from the public facilities commitment contract.
The Syrian Supreme Administrative Court also confirmed this in a ruling: "The contract price in the works contract is considered an essential element and one of its characteristics in the administrative contract is fixed and not subject to modification if this is not explicitly stated. If the contractor abandons the price specified in the contract and requests an increase in its value, this constitutes a violation of a fundamental element of the contract, allowing the other party to terminate the contract."⁸ According to Hungarian legislation, it is defined as: "A contract concluded between a contracting authority and a person or entity to carry out, design, and execute works related to activities specified in the relevant legislation, or to carry out a specific work in accordance with requirements determined by the contracting authority." This definition includes real estate works such as construction, or combined design and

⁶ Riyadh AL-ZUHAIRI: *Manifestations of Administration Authority in Implementing Public Works Contracting*. Master Thesis. School of Law. Baghdad, Iraq, University of Baghdad, 1975, 23.

⁷ Osama AL-AWA: *The legal system for public works contracts in Syrian legislation*. Master's thesis, Damascus University, Faculty of Law, Damascus: Syria, 2018, 22.

⁸ Supreme Administrative Court Decision No. (171/83), in Case No. (177), 1983, published in *Lawyers Magazine* for 1984, 443.

construction, using any means or methods, as long as the final outcome meets the conditions set by the public authority⁹. This definition is in line with European Union Directive 2014/24/EU and reflects a commitment to European principles regarding transparency in public contracts and ensuring that these works achieve the public interest.

2. The concept of administrative authority in monitoring the implementation of the contract

The Oxford Dictionary of English (ODE) defines the verb “monitor” as “to observe and check the progress or quality of (something) over a period of time; keep under systematic review”. According to the ODE, “monitor” originates from a Latin word, “monit”, which means “warned”. Monitoring is a meaningful exercise only if one defines the state desired in advance in terms of objectives or targets. The role of monitoring is to assess whether these objectives (targets) are being met.¹⁰

Monitoring contract performance is a key function in the contract administration process to make sure that all involved parties are performing their duties in accordance with the contract. Requiring Contractual usage reports is a practice used by some states. However, the content and compliance of contractor responses can vary.

Some defined it as: “A function carried out by the competent authority to verify that the work is proceeding according to the set objectives efficiently and on time, and thus it is necessary to complete the completion of the work.”¹¹ Others defined it as: “a means by which one can ensure that goals can be achieved within the specified time.”¹²

From the above, it can be concluded that the previous definitions agreed on basic elements in defining control. Control is a means, not an end. It is an element of the administrative process, permanent and continuous, and its ultimate goal is to ensure that everything goes according to what was planned and achieves the desired goals.

Therefore, we can define oversight of the implementation of a public works contract as a means through which the administration can determine the extent to which implementation procedures and means are compatible with the established plans, leading to high efficiency in implementation for protecting public funds.

As for the legal meaning of administrative control, it means the control carried out by administrative bodies whose formation is issued and whose powers are determined by laws and general regulations. They also adhere, in the procedures and means they undertake, to the provisions stipulated in the laws and regulations.

⁹ Art. 8(3) Act CXLIII of 2015 on Public Procurement.

¹⁰ The Oxford Learner’s Dictionary of Academic English.

¹¹ *Contract Administration Best Practices Guide*. Arkansas Department of Transformation and Shared Services Office of State Procurement, 2019, 10. <https://www.transform.ar.gov/wp-content/uploads/Contract-Administration-Best-Practices-Guide.pdf>. 20 March 2025.

¹² Zaher Abdel Rahim ATEF: *Supervision of Administrative Works*. Dar Al Raya for Publishing and Distribution, Amman Jordan, 2011, 35.

Most jurisprudence believes that the authority of the administration to monitor its contracting party during the implementation of the administrative contract is limited to two meanings: the first meaning is narrow, and the second is a broad meaning, and I will explain the two meanings in some detail.

2.1. The narrow meaning

This meaning is limited to mere supervision of implementation, and must be actual, detailed supervision of all the elements involved in the implementation of the contract, as well as verifying the methods of implementation, and whether they are carried out in accordance with what was agreed upon, as the administration undertakes this supervision by sending its representatives to supervise the progress of work. The safety of the materials used in implementation, their quality, conducting the necessary experiments on them, and reviewing and examining the documents and papers with the aim of ensuring that everything is proceeding according to the conditions set.¹³

Control, in this sense, represents the minimum that can be recognized by the administration in the field of its monitoring of the implementation of the contract, as it is the right and duty of the administration to assume supervision of its contracting party in order to ensure that the contract is implemented in accordance with the terms and conditions agreed upon. This right may find it even in private law contracts that are characterized by equality between the contracting parties.

2.2. Broad meaning

Supervision, in its broad sense, extends to the extent of directing the contracting party during the implementation of the contract, with what this entails of burdening him with additional burdens not previously stipulated in the contract. It represents an important and necessary privilege for the administration. If control was limited to the meaning of supervision, it would be merely an ordinary, familiar authority and its use. It does not raise any problem between the administration and the contractor, and therefore, the real benefit of the oversight authority appears when it is recognized for the administration to go beyond this narrow scope of supervising the implementation of the contract, to begin directing its contractor on how to complete the implementation, in a way that serves the public interest, and thus oversight is considered an exceptional authority for the administration.¹⁴

As for how to exercise control authority in the sense of directing, it can only be done by using legal means, such as issuing instructions to follow a specific method

¹³ Azmi JARADAT: *The administration's authority to monitor the implementation of the public works contract*. Master Thesis. School of Law, Irbid: Jordan, Yarmouk University, 2012, 50.

¹⁴ Mahmoud Abu Al-Saud: The administration's authority to monitor the implementation of the administrative contract. *Journal of Legal and Economic Sciences* Vol. 39, Issue 1, Cairo: Egypt, Ain-Shams University, 1997, 200.

of implementation or refraining from following such a method or issuing executive orders to direct and time implementation without the need to resort to the judiciary.

A decision issued by the Syrian Court of Cassation confirmed that the criterion for management's responsibility for the contractor's work is the right of supervision and direction that management exercises over the contractor. If the matter is limited to the right to supervise, the contractor alone is responsible for his mistakes, without management, even if the matter goes beyond that Oversight and guidance. The Ministry and the contractor are jointly responsible for the latter's mistakes, without distinguishing between the responsibility of each of them individually.¹⁵

Thus, the supervisory authority differs from the directive authority in the extent and limits of each of them. Supervisory authority is a type of subsequent control that is exercised over the results of the facility's activity, and thus, it governs completed work. As for the authority to direct, it is prior oversight, and under this type of oversight, there is continuous communication between the administration and oversight bodies. Therefore, prior oversight is not just oversight, but rather real participation by the administration and decision-making to the extent sufficient to ensure the proper functioning and regularity of the public facility.

As documented in European administrative traditions, Hungarian law often centralizes administrative oversight within statutory frameworks, emphasizing transparency, proportionality, and predictability. Public contract law typically integrates comprehensive monitoring mechanisms to ensure compliance while balancing the rights and obligations of contracting parties. The supervisory function in Hungary focuses on legal compliance and procedural correctness, adhering to EU regulations that prioritize equal treatment and non-discrimination.¹⁶ Unlike the Syrian broader directive authority, Hungarian law tends to limit administrative discretion, relying more heavily on predefined contractual clauses and judicial remedies for resolving ambiguities or disputes. Aligning with a rule-of-law framework where any additional burdens imposed on contractors generally require explicit legal or contractual authorization.

3. Material means for exercising supervisory authority

The management, through its representatives, can enter the workplace, review the documents, examine the materials used, and verify their safety, in addition to ensuring the adequacy of the performance of the contractor's employees and their good selection. These physical means do not have legal effects in themselves, as the mere visit of the work site by the engineer. It does not entail any legal effects, and we will discuss some of these methods.

¹⁵ Syrian Court of Cassation Decision No. (1873)/1984, Basis (675), Rule 310, *Lawyers' Journal* 1986, Issue 7, Hammurabi Reference No. 3843.

¹⁶ Art. (27-135-142-187) Act CXLIII of 2015 on Public Procurement.

a) Visit the workplace

The administration and its representatives, including engineers and technicians, carry out the duties of monitoring and supervising the implementation of the public works contract through repeated visits to the work site, monitoring the work being carried out, and verifying that the work is progressing by the requirements and conditions of the contract, without being bound by a specific time. It has the right to enter the work site, follow up on the implementation work, supervise it, and monitor its progress at every stage of the completion of the work.

The Syrian Book of General Conditions, Article 27, stipulates that: “The public entity, or its representatives, shall visit the work site within reasonable periods to inspect the progress of the works as they deem consistent with the interest of the project...”¹⁷

The importance and effectiveness of this method are evident through observing and following up on the work completed, identifying errors and deviations in implementation, if any, or revealing errors in the works that were executed, ensuring that the materials conform to the contract specifications, in addition to following up on the performance of the contractor’s employees in implementing the contract.¹⁸ Suppose the administration finds that the materials, supplies, and equipment prepared by the contractor for use in the project are unfit for work or do not comply with the terms of the contract. In that case, it has the right to refuse to accept them and request that they be replaced with others. In this case, the contractor is obligated to remove them or replace them at his expense with other types valid and accepted by the administration.

As for Hungarian law, the contracting authority may provide for the possibility of on-site inspection in the procurement documents. This provision allows contracting authorities to include terms in procurement documents that permit site visits to monitor contract execution.¹⁹

What confirms the importance of this method is that the observations that the supervising engineer obtains from visiting the work site help to detect errors at an early stage and be able to correct them easily and without incurring financial loss to the management. However, if the error is not discovered until the implementation begins, the stage that contains this error, as the matter may require stopping work and thus delaying the date of completion of the works, and the administration may resort to the contractor to address the error and grant him compensation in return.

¹⁷ Syrian Legislative Decree No. 450 of 2004, containing the book of general conditions.

¹⁸ *General Guidelines – Management and Monitoring of Procurement Contracts*. The Office of Procurement Regulation, 2021, 34. <https://www.oprtt.org/wp-content/uploads/2021/06/Management-Monitoring-of-Procurement-Contract-pdf.pdf>, 20 March 2025.

¹⁹ Art (56) of Act CXLIII of 2015 on Public Procurement.

b) View documents

The goal of reviewing the contract documents is to ensure accuracy in implementation and that implementation is carried out by the technical specifications and within the established dimensions and measurements to ensure that they are not changed by the contractor during the implementation stage.

The work program represents one of the important technical documents that the engineer or whoever represents the administration must review and study carefully to have complete knowledge of the works to be implemented on a regular and continuous basis to follow up the implementation work step by step, which helps to detect errors in the designs early and this is due to It greatly benefits the safety of implementation and saves public money by not wasting it due to the implementation of defective designs that the administration is forced to repair.

The FIDIC system obligates the contractor to submit to the engineer a detailed work schedule within 28 days from the date of his receipt of the commencement notice. He must also submit a modified program at any time in which it appears that the previous program was not consistent with the actual progress or with the contractor's obligations, including these programs are the order according to which the contractor intends to carry out the works, including the expected timing for each stage of implementation, and a statement of the role of the named subcontractors for each stage of the work, in addition to a statement of the sequence and dates of inspections and tests specified in the contract.²⁰

As for Syrian Decree No. 450 of 2004, it included some minor differences, as it stated that: The contractor must submit to the public authority, within ten days from the date specified for commencing work, a written program explaining the procedures and steps that he wishes to follow in implementing the project and specifying the deadlines during which it is expected to complete each of the stages included in the contract.²¹

The public entity has the right to request that any amendment to this program be made in its interest within the limits of the provisions of the contract and in a manner commensurate with the period specified for the implementation of the total works. The contractor must adhere to this amended program and work in accordance with it during implementation, and he may not deviate from its limits except with written approval from the public entity, if the contractor does not submit the requested program within the specified period, the public body has the right to oblige him to the program that it sets at its discretion after informing him of it.

While the Hungarian Act does not explicitly mention "work schedules", it mandates that procurement documents must enable economic operators to submit technically and economically feasible tenders. This implies that contracting authorities can require detailed implementation plans and schedules. Art 57 requires provision

²⁰ *FIDIC Contracts. Red book. General Conditions*, 1999, clause 8.3.

²¹ Art (27) of Syrian Legislative Decree No. 450 of 2004, containing the book of general conditions.

of information necessary for the tenderers and the candidates in relation to the preparation of the tender and the request to participate, the list of the certificates, declarations to be submitted as part of the tender and the request to participate, as well as the standard form of the ESPD.²² The documentation may also contain samples of certificates, declarations proposed for the tenderers. This provision ensures that contracting authorities can request and manage necessary documentation, such as work schedules, to oversee contract performance effectively.

Analyzing the legal texts reveals that detailed provisions for submitting and reviewing work schedules are crucial for effective contract implementation. The FIDIC system and Syrian Decree No. 450 of 2004 mandate contractors to submit implementation plans and allow administrations to request modifications. Hungarian law, under Article 57 of Act CXLIII of 2015, enables authorities to require documentation like work schedules, though it lacks explicit mandates. A common issue across these frameworks is the absence of a defined timeline for administrations to review and approve work programs. Addressing this gap through legislative action would streamline processes, reduce delays and minimize disputes.

c) Inspection and testing

Inspection and testing are vital means that enable the supervising engineer to verify the quality of materials used in construction projects so that only materials that conform to the agreed-upon technical specifications are used. The International Contracting System (FIDIC) stipulates that the contractor is responsible for all of his equipment, and it must be dedicated exclusively to carrying out the work. During production, manufacturing, and construction operations on or off-site, the employer has the right to conduct inspection, inspection, measurement, and testing of materials. The Contractor must provide full opportunity to the Employer's personnel to carry out these activities. When the works are ready, the Contractor must notify the Engineer, who in turn must carry out the inspection, inspection, or test without delay. If the Contractor fails to notify, he must disclose the covered works, reinstate them, and bear all costs involved.²³

In Syria, the book of general conditions includes similar texts. Stipulates that the contractor must inspect any part of the works upon the request of the public authority. If the works are sound, the public entity shall bear the expenses of detection and recovering, but if they are in violation, the contractor shall bear all costs. The public authority also has the right to examine any of the prepared materials in Syrian or international technical laboratories at the contractor's expense.²⁴

As for Hungarian law empowers contracting authorities to include inspection and testing provisions in procurement documents. Article 60 allows them to require test

²² Art (57) of Act CXLIII of 2015 on Public Procurement.

²³ *FIDIC Contracts. Red book*. General Conditions, 1999, clause 7.3.

²⁴ Art (27/ B) of Syrian Legislative Decree No. 450 of 2004 containing the book of general conditions.

reports or certificates from conformity assessment bodies to ensure compliance with technical specifications and contract conditions, while also accepting equivalent certificates from other recognized bodies.²⁵

Inspection and testing are vital for ensuring quality in all frameworks, with FIDIC offering greater flexibility by enabling on-site engineers to conduct immediate inspections, avoiding delays. Syrian Decree No. 450 relies on committees, which can extend timelines, while Hungarian law, under Article 60 of Act CXLIII of 2015, ensures compliance by allowing conformity certificates or equivalent proof. Adopting streamlined processes, as seen in FIDIC, could improve efficiency in Syrian and Hungarian systems.

d) Legal means for exercising supervisory authority

Despite the importance of physical means for safe implementation and good supervision, they do not create any legal effect when used. The mere visit of the work site by the engineer or review of the technical documents does not create any legal effect, and they are not sufficient on their own to make the control process successful and achieve its objectives; as in addition, the administration has multiple legal means that produce important legal effects and represent an expression of its will, an application of its privileges that it enjoys, and an exercise of its powers in regulating public facilities. The administration may use whatever legal means it deems appropriate to organize oversight.

3.1. Work orders

Work orders have been defined as “orders issued by the administration to public works contractors to determine the conditions for contract implementation, or supplementing what is missing, or amending it. These orders are usually issued by some technical members of the administration, especially the engineers entrusted with supervising the implementation of public works.²⁶” FIDIC contracts also define work orders as “any change in the work for which instructions are issued and approved as a change”.²⁷

There are several work orders issued by the administration during the implementation of a public works contract, including the order to begin implementation of the contract, the order to determine the steps of the work progress, or to modify the

²⁵ Art (60): Contracting authorities may require that economic operators provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions. Where contracting authorities require the submission of certificates drawn up by a specific conformity assessment body, certificates from equivalent other conformity assessment bodies shall also be accepted by contracting authorities.

²⁶ Nisreen MAHASNEH: Issuing change orders by the engineer in the contracting contract, a comparative study in the model FIDIC contract. *Al-Manara Magazine*, 2010 (6), Jordan, Al-Bayt University, 279.

²⁷ *FIDIC Contracts. Red book*. General Conditions, 1999, clause.1.1.6.9.

methods of its implementation, or to order the suspension of the works. This right includes the authority to postpone the works and the authority to completely stop them, and it also has the order to replace or dismiss the contractor's engineers or workers if they refuse and neglect to implement instructions from management representatives or attempt to deceive management or violate the terms of the contract.

Here it must be noted that not everything issued by the management or the supervising engineer is considered work orders. The engineer's evaluation of the progress of work as slow is considered an observation and not a work order. The same applies to the notices and demands that the contractor addresses to the management or engineer regarding the need to provide him with the details of the drawings and required instructions.

Several conditions must be met for work orders to produce their legal effects, some of which are formal and some of which are substantive, as follows:

- Work orders must be issued in writing:

FIDIC contracts generally require work orders to be issued in writing, though they may take forms such as meeting minutes, designs, or letters. Verbal orders are acceptable only if confirmed in writing by the contractor within two working days and not contested by the engineer.²⁸

It is noted that if the principle is for work orders to be written, then there are exceptional cases in which verbal work orders can be relied upon, such as if the contract explicitly stipulates that the verbal order is permitted or it was at the request of the contractor himself, or if it is proven that implementing the verbal order has become necessary due to an error. On the part of the administration, or the writing requirement was waived by the customs of agreement and dealing between the engineer and the contractor.

- Notifying the contractor of work orders:

The engineer must notify the contractor when issuing work orders. Failure to notify them will result in the contractor not being committed to executing them, and he may have reservations about them. FIDIC contracts also require that these notifications be in writing, delivered by hand in return for notification of receipt, or sent by mail or via agreed-upon electronic means. In the contract documents, the notification may be delivered to the contractor's representative, as he has the authority to receive notifications and instructions.²⁹

- The work order must be issued by the competent authority:

It is not enough for the work order to take written form, but it must be issued by the competent authority, whether this authority is represented by the contracting administration itself or the engineer supervising the implementation of the public works contract.³⁰

²⁸ *FIDIC Contracts. Red book. General Conditions*, 1999, clause 1.3.

²⁹ *FIDIC Contracts. Red book. General Conditions*, 1999, clause 4.3.

³⁰ Samir Abdel Aziz EL GAMAL: New legal rules in FIDIC contracts. *Sharia and Law Journal* Volume 26, Issue 52, 2012, Al Ain: United Arab Emirates, College of Law – United Arab Emirates University, 58.

This is an obvious condition, given that these orders are administrative decisions that must be issued by the authority competent to do so. If the order is issued by someone other than the competent authority, then this is flawed by the defect of lack of jurisdiction.

- Work orders must be necessary:

The original is to grant the engineer the authority to issue work orders. Still, this authority may be restricted according to the special conditions of the contract that are considered complementary to the general conditions, as the general conditions of the FIDIC contract did not stipulate such a restriction and merely stipulated the necessity of obtaining the employer's approval when exercising some the powers stipulated in the Special Conditions of the Contract. In contrast, the Special Conditions of FIDIC Contracts restrict the issuance of change orders to being necessary to complete the work and in its interest.³¹

The supervising engineer has discretionary authority to determine the importance and necessity of work orders and the extent to which they achieve the interest of the project. They must also be within reasonable limits in terms of size, value, and type, otherwise, fundamental changes will be considered outside the scope of the contract.³²

- Legal effects of work orders

The work order has legal force binding the contractor if it is issued in compliance with its conditions and is communicated to him in the required legal form. The contractor is obligated to implement it even if he has an objection to it. He may accept the order issued to him explicitly when he signs the receipt without reservations or implicitly if he proceeds to implement it. However, if the contractor refuses to implement the order, whether by refraining from signing it or signing it while stating some reservations, this constitutes a serious mistake that would expose him to contractual penalties.

The terms and conditions books usually regulate the procedures related to objection and specify short deadlines for the extinguishment of the right to it. The expiration of these periods will result in the contractor's right to file a grievance being forfeited, and the administration may waive its insistence on the expiration of this period, provided that it explicitly declares its intention to do so.

The issuance of work orders also has implications related to amending the contract prices or its value by increasing or decreasing. The contracting administration has the right to amend the terms of the contract, i.e. amend its prices. This right is derived from the administrative contract itself or may be imposed by the public interest, which may require a change in the terms of the contract to be. It is more feasible to achieve this in light of the emerging variables that did not exist at the time of concluding the contract. The contractor has the right to demand compensation if

³¹ *FIDIC Contracts. Red book. General Conditions, 1999, clause 3.1*

³² Samir Abdel Aziz EL GAMAL: New legal rules in FIDIC contracts, *Sharia and Law Journal* Volume 26, Issue 52, 2012, Al Ain: United Arab Emirates. College of Law – United Arab Emirates University, 60.

the work orders were costly in terms of expenses and these orders exceeded the modification permitted in the public works contract.³³

Among the effects that may result from issuing work orders is the extension of the contract period, as the increase in the implementation of the works may affect the implementation of the work program such that the implementation of the works cannot be completed within the period agreed upon under the original contract.

In Syria, the contracted quantities may be increased or decreased during the contract implementation period by a rate not exceeding 30% for each item or article of the undertaking separately, with the same conditions and prices stated in the contract and without the need for a new contract, provided that the value of the total increase or decrease does not exceed 25% of the total value of the contract. In the event of an increase, the contractor is given an additional period commensurate with the nature and amount of this increase for this increase only.³⁴

One of the jurisprudence of the Syrian administrative judiciary stated that “assigning the contractor during implementation to additional work that is not noted in the book of conditions and other work that exceeds 30% of the work items, the administration must pay their value”.³⁵

Another jurisprudence also stated that “the contractor is entitled to compensation for the additional work and expenses required by the emergency modifications to the method of implementing the work according to what technical expertise estimates”.³⁶

In Hungary, law permits changes to contracts within specific limits, primarily in alignment with EU Directive 2014/24/EU, which regulates contract amendments. Changes are allowed only if they are essential for contract performance and comply with predetermined thresholds to prevent substantial alterations to the original agreement³⁷. Contracting authorities must clearly outline the conditions for modifications in procurement documents, including necessary changes during contract execution. Hungarian regulations emphasize the principle of proportionality, requiring all changes to be documented and justified, ensuring fairness and accountability.

In light of the above, we conclude that work orders are the source of most disputes and disagreements between the contracting administration and the contractor, and they also affect the cost and duration of implementation. Therefore, they are considered an important means of control, and the person in charge of them must carefully research them to discover the locations of the defects and correct them, given the consequences of issuing them.

³³ Hanadi HUSSEIN: *Management control at the stage of implementing the administrative contract*. Ph.D. faculty of law. Baghdad, Iraq, Alnahrayn University, 2015, 166.

³⁴ Art (62 and 69) of Syrian Law No. 51 of 2004.

³⁵ Decision No. 230 in Appeal No. 411 of 1984.

³⁶ Decision No. 292 in Appeal No. 109 of 1984.

³⁷ Art (141) of Act CXLI of 2015 on Public Procurement.

3.2. *Business measurement and disbursement documents*

The work carried out by the provisions of the contract is measured gradually during implementation and upon completion of each stage of the project, and before covering any part of the work that may not be detected and measured after covering, and thus constitutes an approved method of work in the public works contract to finance the contractor during the contract implementation period. It is a method of determining and calculating the quantity and value of work completed.

According to the terms of the FIDIC³⁸, the contractor must submit a statement demanding payment to the supervising engineer at the end of each month. The statement must be organized on the form approved by the engineer, and include details of the amounts due and supporting documents, including the monthly work progress report.³⁹

The engineer has the right to request measurement of any part of the works, and he must notify the contractor of this⁴⁰. The Contractor or his qualified representative must be present to assist the Engineer in making the measurement and providing the required details. If the contractor fails to appear, the measurement made by the engineer shall be deemed correct.⁴¹

In Syria, the public authority has the right, if necessary, to request the contractor or his authorized agent to come to the work site on a date it specifies to conduct measurements of the completed works. In the event that the contractor or his agent fails to come to the site on the specified date, the administration authority has the right to conduct the measurements alone without being the contractor has the right to object to the accuracy of the measurements taken.⁴²

The work completed under the contract shall be measured based on the units recorded next to it in the list of quantities and lists, geometrically according to the applicable technical methods and any increase in quantities and dimensions made by the contractor shall be settled without a written request from the administration or its approval. The contractor is held accountable based on the actual quantities completed and measured at the work site for each of the works required of him in the contract.⁴³

Any dispute that arises between the contractor and the public body regarding the measurements taken will be decided by the public body within a period not exceeding 48 hours from taking the measurements. It is not permissible to cover any part of

³⁸ *FIDIC Contracts. Red book. General Conditions*, 1999, clause (14.3-12.2).

³⁹ Khaled HYARI, Payment procedures under FIDIC construction contract, *Proceedings of International Structural Engineering and construction* 9 (1), 2022, 3. [www.doi.org/10.14455/isec.2022.9\(1\).ldr-05](https://doi.org/10.14455/isec.2022.9(1).ldr-05)

⁴⁰ Measurement and Evaluation under the FIDIC Standard Form Contracts, 05 December 2022. <https://instituteccp.com/files/22-12-06-ICCP-Measurement-and-Evaluation-Under-the-FIDIC-Standard-Form-Contract-Full.pdf>, 20 March 2025.

⁴¹ *FIDIC Contracts. Red book. General Conditions*, 1999, clause 12.2.

⁴² Art (35:B) of Syrian Decree No. 450 of 2004.

⁴³ Art (35:C) of Syrian Decree No. 450 of 2004.

the work except after the public body gives its final decision on its subject or with its approval, and its decision in this regard is considered final and binding.⁴⁴

Then, the contractor's public authority organizes lists of the works and preparations completed by him so that these lists include the works that are finally completed and their value is estimated according to the prices noted for them in the contract, and the works that are not finally completed and their value is estimated based on the prices noted for them in the contract, taking into account the degree of their completion, in addition to the Supplies prepared at the work site and their value is estimated based on considering the lowest between the popular price for them when organizing the inspection and the estimated price for them in the price analysis table.⁴⁵

If it becomes clear to the administration that the contractor has been late in carrying out his work with the speed and activity estimated in the agreed-upon program or that the work carried out is not consistent with what the provisions of the contract require in terms of accuracy and conformity with the plans and specifications, the public authority has the right to deduct an amount from his monthly statements proportional to the delay or the degree of defect in the work.

It is worth noting that recording the work and supplies in the monthly statements and paying their value does not necessarily mean that the administration agrees to accept them permanently or waives any of its rights regarding them. It remains for it, throughout the period of the contract's validity and the warranty period, to review the account of these payments and settle any error or omission that may appear. In it, the contractor is deemed to have agreed to what is stated in the monthly statements once he signs them, and if he has any objection or reservation to them, he must submit them within ten days from the date of signing them with the reservation.⁴⁶

The value of the pledge is paid according to periodic monthly statements provided by the Works Department to the Financial Branch and according to the progress of the work. The monthly statements are disbursed within 15 days from the date of their submission to the accounting department or the relevant financial department, complete with its legal documents and conditions.⁴⁷

We note here that the Syrian legislator did well in specifying a short period during which the value of the monthly statements must be disbursed to the contractor, contrary to what is the case in the FIDIC system, which reflects positively on the speed of implementation of the works and their completion on the specified date.

In conclusion, we can say that the process of measuring work and issuing disbursement documents involves many procedures that the supervisor must follow to discover defects, if any, given that they are two important means of evaluating the work completed and paying its value to the contractor. Therefore, the contracting management body or others have the right One of the authorities that exercises oversight authority is to request the person in charge of the work to present the monthly

⁴⁴ Art (35:D) of Syrian Decree No. 450 of 2004.

⁴⁵ Art (36:A) of Syrian Decree No. 450 of 2004.

⁴⁶ Art (36:D) of Syrian Decree No. 450 of 2004.

⁴⁷ Art (36:E) of Syrian Decree No. 450 of 2004.

statements and disbursement documents to audit them and investigate the legality and suitability of all their procedures.

3.3. *Delivery*

Delivery in public works contracts ensures administrative control through temporary and final delivery stages, emphasizing compliance with contract terms, specifications and quality standards.

Temporary delivery occurs after the contractor has completed the agreed-upon work. The contractor must notify the supervising authority, who then inspects the works to confirm compliance with the contract. If deficiencies or defects are found, the administration may refuse delivery or accept the works with reservations. In the latter case, the administration deducts costs equivalent to the defects or reserves the right to correct them at the contractor's expense. The contractor is also obligated to clean the site, removing waste and debris, to ensure the project is ready for temporary delivery. Under Article 39 of Decree No. 450 of 2004 in Syria, a one-year warranty period begins at temporary delivery. During this period, the contractor remains responsible for repairing any new defects or deficiencies, unless caused by the misuse of the facility by the public entity.⁴⁸

The FIDIC system offers a parallel process, allowing contractors to request a receipt certificate for completed works. The engineer must issue or reject the certificate within 28 days, providing reasons and specifying additional requirements if necessary. If no response is given, the certificate is deemed issued if the works substantially comply with the contract. This ensures a structured and timely approach to temporary delivery.⁴⁹

Final delivery occurs after the warranty period, contingent on the contractor fulfilling all obligations and resolving any identified defects. In Syria, special committees formed by the public authority oversee this process. These committees review project documentation, temporary delivery reports, and warranty-period defects before issuing the final delivery report. However, Syrian regulations do not stipulate a fixed timeline for the administration to conduct post-notification inspections, potentially delaying project completion.⁵⁰ It would have been better for these conditions to set a date for examination after receiving the contractor's notification and not leave the period open for the administration to conduct a procedure.

Syria's legal framework also imposes a ten-year liability on contractors for fundamental defects that compromise structural safety or functionality. This liability remains enforceable even after the warranty period, reflecting a stringent quality assurance approach.⁵¹ It emphasizes the contractor's obligation to meet the highest

⁴⁸ Art (39:B) of Syrian Decree No. 450 of 2004.

⁴⁹ *FIDIC Contracts. Red book. General Conditions*, 1999, clause 10.1.

⁵⁰ Art (39:H) of Syrian Decree No. 450 of 2004.

⁵¹ Art (39:G) of Syrian Decree No. 450 of 2004.

standards during implementation, safeguarding against defects that could jeopardize public safety or resources.

The ten-year guarantee underscores the importance of thorough oversight at every stage of the project. By ensuring contractors adhere to contract terms and specifications, the administration can deliver projects without significant defects, achieving durability, safety, and functionality. This approach protects public funds and promotes long-term trust in public works management.

We should note that the expiration of the warranty period does not affect the contractor's responsibility for every basic defect that appears in the facilities that affect their safety and are the result of the contractor's fraud or poor implementation, as he remains responsible for them within ten years from the completion of the work.⁵²

As for Hungary, the contractor notifies the contracting authority upon completing the works, which inspects for compliance with contract terms and specifications. Defects must be rectified within a set timeline, with penalties or payment adjustments applied if necessary. This temporary delivery phase ensures transparency through technical reports and deficiency records.⁵³ Final delivery follows the warranty or defect liability period, during which contractors address issues from poor workmanship or contract deviations. Only after fulfilling all obligations and resolving defects is final acceptance granted.⁵⁴ Hungarian law allows flexible warranty periods tailored to projects, holding contractors accountable for identified defects. Unlike Syria's fixed ten-year liability, Hungary's defect liability terms are mutually agreed, balancing accountability and flexibility.

This is considered an estimate by the legislator of the adequacy of the duration of testing the durability of construction, and the suitability of proper implementation of all works. Therefore, the ten-year guarantee is a control imposed by the law on the administration to verify and ensure the correctness of the implementation of the works after delivery, as this type of control aims to identify defects that the administration cannot discover during implementation and during the receipt of the work, in addition to being a method of control over the materials and methods used in implementation, and it represents a test of the adequacy of the works and their absence from any defects that threaten the durability and safety of the works and make them unfit for the purpose for which they were created.

Conclusion

Studying the means of monitoring the implementation of public works contracts according to comparative system highlights the significant importance of achieving

⁵² Art (416) of the Syrian Civil Law No. 84 of 1949.

⁵³ Tamás LUKAS – Dániel LUKAS: FIDIC Contracts and Hungarian Law or the Most Important Aspects of Using FIDIC Contracts in Hungary, *The International Construction Law Review*, Pt 2, 2014, 6.

⁵⁴ DORMÁN, EGRI, MARTON and other: *Recommendations For The Conclusion Of Construction Contracts And For The Construction Of Buildings*, National Federation of Hungarian Building Contractors, ÉVOSZ, 2019.

success and quality in the execution of public projects. Through a comprehensive examination of the stipulated conditions and mechanisms, several important results can be achieved:

1. Enhancing transparency and accuracy: Relying on well-thought-out and systematic monitoring mechanisms, by comparative legal systems, enhances the accuracy of implementation and transparency of processes between contracting parties.
2. Improving quality: Through periodic inspections and monthly reports, the use of materials that conform to specifications and technical standards is ensured, leading to improved final work quality.
3. Reducing disputes: Monitoring provides clear mechanisms for resolving potential disputes between parties by clearly defining responsibilities and obligations, thus reducing the chances of legal disputes.
4. Ensuring continuity of funding: Through periodic assessments and the submission of payment claims, continuity of funding is ensured for contractors, contributing to the continuity of work without delay.
5. Building trust between parties: Effective monitoring contributes to building trust between all stakeholders by ensuring that each party adheres to its duties and responsibilities, and by documenting processes periodically and systematically.

Finally, studying mechanisms for monitoring the implementation of public works contracts by comparative legal systems is an essential step toward achieving successful and sustainable infrastructure projects that benefit the entire community. These mechanisms enhance the ability of implementing agencies to complete projects that meet the highest technical and administrative standards, contributing to comprehensive and effective development.

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